IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6741 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AMARSINHBHAI KANTIBHAI PATEL

Versus

STATE OF GUJARAT & ANOTHER

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Appearance:

MR TH SOMPURA for Petitioner

MS S.A.TALATI, AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 23/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for an appropriate writ, order or direction, quashing and setting aside an order passed by District Magistrate, Bhavnagar -respondent no.2 herein on December 31, 1987 (Annexure: C to the petition) and confirmed by the State

Government on 5th December, 1988 (Annexure : E to the petition) by directing the authorities to renew the licence of the petitioner bearing No. 189 of 1977.

2. The case of the petitioner was that he was President of Bhavnagar Diamond Merchants' Association and was a man of repute. He was holding Arms Licence bearing No. 189 of 1977 since 1977 for his personal use. In that capacity, he owned and possessed a weapon viz. 32 bore revolver. The licence was renewed from time to time till January 12, 1988.

3. It was the case of the petitioner that when he was travelling in S.T.Bus near Anand, his bag was stolen, wherein the above weapon was kept by him. Immediately, he lodged a complaint which was registered as Complaint No.5287. The arm, however, could not be traced. Meanwhile, period of licence was about to expire. He, therefore, made an application on December 4, 1987 for renewal of licence, but the same was rejected by the second respondent vide his order dt. December 31, 1987. Being aggrieved by the said order, petitioner preferred an appeal before the respondent no.1 which was also dismissed by the State Government and the said order is under challenge in this petition. The petition was admitted. Today, it is called out for final hearing.

4. I have heard Mr. T.H.Sompura, learned counsel for the petitioner and Ms. S.A. Talati, learned Assistant Government Pleader for the respondents.

5. Mr. Sompura contended that there is an error of law by the authorities in not affording an opportunity of hearing to the petitioner before the impugned decision was taken. He submitted that there is distinction between grant of licence and renewal of licence. Renewal of licence is not a ministrial act and when an application for renewal of licence was to be rejected, it was incumbent upon the authority to comply with the principles of natural justice.

6. He also submitted that when the arm was stolen and that fact was duly brought to the notice of Police Authorities by filing a complaint, it was obligatory on the part of the respondents to consider the said fact. He submitted that nowhere in the Act, it is provided that a person cannot hold more than one arm. On the contrary, Section 3 of the Arms Act, 1959 provides that a person cannot hold more than three arms under one licence, meaning thereby that a person can hold more than one arm under one licence.

7. He also submitted that the second respondent had practically acted under dictation inasmuch he merely rejected the application on the basis of a letter dt. June 12, 1985 written by the Home Department of the Government of India a reference of which was made in the impugned order itself. A copy of the said letter was not supplied to the petitioner. The appellate authority has also committed an error of law in not giving copy thereof to the petitioner.

8. Further grievance of Mr. Sompura was that the appellate authority made certain observations while dismissing the appeal and confirming the order passed by the District Magistrate, inter alia, stating that the District Magistrate was right in observing that the petitioner had not taken due care and caution for his weapon and hence the conclusion arrived at by the District Magistrate could not be said to be improper or illegal. Mr. Sompura submitted that it was no where stated by the District Magistrate that the petitioner was careless or he was negligent, but the order was passed by the District Magistrate only on the basis of the letter written by the Home Department. He, therefore, submitted that the petition deserves to be allowed.

9. Ms. Talati, learned AGP supported the orders passed by the authorities.

10. In the facts and circumstances of the case, the petition deserves to be allowed. So far as the order passed by the second respondent is concerned, looking to the order, it is abundantly clear that he has not taken into account relevant facts and circumstances. He merely referred to a letter written by the Home Department and rejected the application for renewal of licence. Mr. Sompura is, therefore, right in submitting that the appellate authority was not right in putting something in the order passed by the District Magistrate that the petitioner was careless and negligent and, hence, the District Magistrate was right in passing the order against him. In any case, an application for renewal of licence will have to be decided considering relevant facts and circumstances. If the authorities intended to rely on a letter written by Home Department of the Government of India for rejecting the application of the petitioner, it was obligatory on the part of the authorities to supply a copy of such letter so as to enable the petitioner to make his submissions.

11. In the facts and circumstances, the orders passed by the authorities, without observing principles of

natural justice, deserve to be quashed and set aside and are hereby set aside by directing the District Magistrate to consider the case of the petitioner afresh and decide the matter independently in accordance with law after affording an opportunity of hearing to the petitioner.

11. For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. The order dated December 31, 1987 passed by the District Magistrate, Bhavnagar (Annexure : C to the petition), and confirmed by an order dt. December 5, 1988 passed by the State Government (Annexure : E to the petition) are hereby quashed and set aside. The District Magistrate, Bhavnagar is directed to decide the application afresh in accordance with law after affording an opportunity of hearing to the petitioner. Rule is made absolute. As the matter pertains to renewal of licence, the authority is directed to decide the same as expeditiously as possible, preferably within six weeks from the receipt of writ of this Court. No order as to costs.

Date: 23/3/2000. (C.K.THAKKER,J.)
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